IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 1984 OF 2006

New Kapas Wadi. ...Petitioner.

V/s.

The Commissioner,
Mumbai Municipal Corporation & Others. ... Respondents.

Mr. J.G. Reddy for the Petitioner.

Mrs. A.R. Joshi for B.M.C.

Mr. V.M. Phal, A.G.P. for the State.

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CORAM : DR. D.Y. CHANDRACHUD,J.

18TH SEPTEMBER, 2006.

P.C. :

1. This Petition is filed by an Association which is styled as the New Kapas Wadi, Kali Basti, Ekta Seva Mandal. The relief that has been sought is a direction to the Commissioner of the Municipal Corporation and to the Chief Executive Officer of MHADA directing them to examine the cases of each of the members of the Petitioner individually and to decide their respective claims on merits. The Association claims to represent 170 members whose structures are stated to have been situated on a plot of land bearing CTS Nos.30 and 31(part) at Juhu Village, Andheri (West). A notice of demolition was given by the Mumbai Municipal Corporation on 28th April 2006. Proceedings emanating therefrom were disposed of by the

Division Bench on 20th June 2006. The Division Bench disposed of the proceedings with the following directions :-

> "The Respondent-Corporation is directed to examine the claim of the members of the Petitioner - Seva Mandal on the basis of the documents already submitted by them to the Corporation. The said exercise shall be completed within a period of four weeks from today. Needless to say that the Corporation will examine individual case of each member of the Petitioner - Seva Mandal and in the event of the Corporation finding that the member is occupying the premises prior to 1995, and is eligible for alternative accommodation elsewhere as per the scheme, shall provide accommodation to such member. In other words, if any member of the Petitioner - Seva Mandal is not found to be occupying the premises prior to 1995, he is liable to be evicted by the Corporation."

2. The Municipal Corporation has filed an affidavit in reply stating that general notices were issued on 28th April 2006, 3rd May 2006 and 23rd May 2006 in respect of the structures that were situated on the Irla/Abhishekh Nalla to the extent of a width of 30 ft. from the bank of Nalla. The demolition was, it has been stated required to be carried out since the Nalla had to be cleaned up and the structures in question were creating a hindrance in the cleaning and widening of the Nalla. The Municipal Corporation has stated in the affidavit that a strip of land with a width of 30 ft. abutting the Nalla was accordingly vacated. The members of the Petitioner are stated to have thereupon occupied land adjacent to the aforesaid strip of 30 feet. According to the Corporation,

the land upon which the structures of the members of the Petitioner were situated was vacated and under a Slum Rehabilitation Scheme all the occupants were granted alternate accommodation by the Slum Rehabilitation Authority. It has been stated that after the order of this Court dated 20th June 2006, the Officers of the Municipal Corporation visited the Office of the Slum Rehabilitation Authority and the Developers and upon verification of the documents found that the same documents have been submitted by the members of the Petitioner to the Slum Rehabilitation Authority to claim alternate accommodation. It has been submitted that the members of the Petitioner, after receiving alternative accommodation under the Slum Rehabilitation Scheme had now constructed unauthorised structures on the 30 ft. wide road abutting the Nalla which was earlier vacant and have claimed a right in respect of the present structures by taking advantage of the documents pertaining to the original structures which were already removed by the Slum Rehabilitation Authority.

3. In view of the affidavit which has been filed on behalf of the Municipal Corporation, it is clear that several disputed questions of fact arise. It is not possible for the Court to entertain a Petition filed generally on behalf of the members of the Association to enquire into the legitimacy of the claim of each one of the members particularly since the claim is seriously

disputed on the part of the Municipal Corporation. The appropriate order in the circumstances, would be for the Court to direct that if any individual is still aggrieved by the action of demolition and by the failure of the Competent Authority to provide alternate Accommodation, despite being in occupation prior to the cut off date of 1st January 1995 it would be open to such member to move a representation before the Municipal Corporation. In the event, such a representation is filed, the Commissioner of the Municipal Corporation shall direct the Assistant Municipal Commissioner concerned to pass fresh orders thereon having regard of the grievance before the Corporation. Such orders shall be passed within a period of 4 weeks from the receipt of the representation concerned. If the individual concerned is still aggrieved by the decision of the Corporation, it will be open to him to pursue his remedies in law.

4. The Writ Petition is accordingly disposed of with these directions.